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**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Order Instituting Rulemaking to  
Consider Regulating  
Telecommunications Services Used  
by Incarcerated People.

Rulemaking 20-10-002

**ASSIGNED COMMISSIONER'S PHASE II SCOPING MEMO  
AND RULING EXTENDING STATUTORY DEADLINE**

This Scoping Memo and Ruling (Scoping Memo) sets forth the issues, need for hearing, schedule, category, and other matters necessary to scope this proceeding pursuant to Public Utilities (Pub. Util.) Code Section 1701.1. and Article 7 of the Commission's Rules of Practice and Procedure.

The statutory deadline for this proceeding is extended to 18 months from issuance of this Scoping Memo, or May 29, 2023.

**1. Procedural Background**

The California Public Utilities Commission (Commission) opened this Order Instituting Rulemaking (OIR) to *Consider Regulating Telecommunications Services Used by Incarcerated People* on October 8, 2020. Parties commented on the OIR on November 9, 2020 and November 19, 2020. A Phase I Prehearing Conference (PHC) was held on December 10, 2020, and the assigned Commissioner issued a Scoping Memo and Ruling (Phase I Scoping Memo) on January 12, 2021.

On April 2, 2021, the assigned Administrative Law Judge (ALJ) issued a *Ruling Providing Staff Interim Rate Relief Proposal for Comment* (Staff Proposal). Parties filed comments on the Staff Proposal on April 30, 2021 and May 12, 2021. On April 28 and 29, 2021, the assigned ALJ convened two Public Participation

Hearings to hear from members of the public about issues in this proceeding. On July 12, 2021, the assigned ALJ issued a proposed decision, which the Commission adopted on August 19, 2021, after taking party opening and reply comments.

On September 7, 2021, seven parties filed pre-PHC statements.<sup>1</sup> On September 15, 2021, the assigned ALJ convened a Phase II PHC to discuss the issues of law and fact, determine the need for hearing, set the schedule, and address other matters. Representatives of nine parties participated in PHC, including Global Tel\*link Corporation (GTL), Network Communications International Corporation Inmate Communications (NCIC), Securus Technologies, LLC (Securus), the Californians for Jail and Prison Phone Justice Coalition (Justice Coalition), Public Advocates Office (Cal Advocates), Center for Accessible Technology (CforAT), Prison Policy Initiative, Inc. (PPI), TURN and the San Francisco Financial Justice Project.

On October 12, 2021, TURN filed a proposed Phase II workshops framework and draft Protective Order (TURN Proposal), as requested by the assigned ALJ in a September 18, 2021 ruling. As directed by the ALJ, the TURN Proposal had been previously discussed by parties in an October 4, 2021 meeting and appended statements by interested parties. Three parties and TURN filed additional comments on the TURN Proposal on October 18, 2021

After considering the seven pre-PHC statements, the TURN Proposal, parties' comments on the TURN proposal, and discussion at the September 15, 2021 Phase II PHC, I have determined the issues and initial schedule of the proceeding to be as set forth in this Scoping Memo.

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<sup>1</sup> CforAT, Securus, GTL, Justice Coalition, the Cal Advocates, TURN, and the PPI.

## **2. Overview of Issues**

### **2.1. Commission Authority to Regulate Video and Related Services**

The California Constitution and Pub. Util. Code vest in the Commission regulatory authority over public utilities, including telephone corporations.<sup>2</sup> Pub. Util. Code Section 233 defines “telephone corporations” as “every corporation or person owning, controlling, operating, or managing any telephone line for compensation within this state”<sup>3</sup> and, in turn, defines “a telephone line” to include “all conduits, ducts, poles, wires, cables, instruments, and appliances, and all other real estate, fixtures, and personal property owned, controlled, operated, or managed in connection with or to facilitate communication by telephone, whether such communication is had with or without the use of transmission wires.”<sup>4</sup> In the OIR for this proceeding, the Commission sought comment on whether the Commission should cap rates for incarcerated person’s calling services (IPCS), including video calls.<sup>5</sup>

In Decision (D.) 21-08-037, the Commission adopted an interim intrastate IPCS rate cap of seven cents per minute (\$0.07/minute) and ancillary service fee requirements. For the purposes of D.21-087-037, the Commission defined intrastate IPCs as including (but not limited to) voice and interconnected voice over internet protocol (VoIP) calling, including voice and VoIP voice

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<sup>2</sup> Cal. Const., art. XII, §§ 3, 6; *see also* Pub. Util. Code, § 216, subd. (b) (“Whenever any . . . telephone corporation . . . performs a service for, or delivers a commodity to, the public or any portion thereof for which any compensation or payment whatsoever is received, that . . . telephone corporation . . . is a public utility subject to the jurisdiction, control, and regulation of the commission and the provisions of this part.”).

<sup>3</sup> Pub. Util. Code, § 234, subd. (a).

<sup>4</sup> Pub. Util. Code, § 233.

<sup>5</sup> OIR to *Consider Regulating Telecommunications Services Used by Incarcerated People* at 7.

communications services serving people with disabilities.<sup>6</sup> D.21-08-037 further indicated the Commission's intent to review this definition in a later phase in this proceeding particularly regarding video services, which were excluded from the definition.<sup>7</sup>

A central question in this proceeding, therefore, is whether the Commission has authority to regulate rates, fees and/or service quality issues for three types of additional communications services provided to incarcerated persons in California. These are: (1) video calling services, including remote video calling services and in-person video calling services; (2) written electronic communication services, including texting (SMS) services, private messaging services, and email services; and, (3) entertainment services such as photo sharing, music or video entertainment and/or internet access services. We call these services collectively "video calling and related services" and distinguish these from the technology through which the service is provided, including wall-mounted telephones, cell phones, tablets, or other devices, which may be used in a variety of ways to provide the end-user with these services.

This Scoping Memo schedule calls for parties to file legal briefs on jurisdictional questions early in Phase II of this proceeding, as recommended by several parties and, at this stage, I anticipate an early decision addressing jurisdictional issues.

We also anticipate providing an opportunity later in Phase II for parties to comment on questions regarding the appropriate methodology(s) and/or data sources the Commission should use to inform our adoption of permanent

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<sup>6</sup> See discussion of Commission authority over VoIP calling services in D.21-08-037 at 17-18, in D.19-08-025 at 9-10 and in D.20-09-012 at 31-41. See also Pub. Util. Code §§ 216, 234, and 701.

<sup>7</sup> D.21-08-037 at 21 and 102-103.

voice-only IPCS rate caps or ancillary fee requirements and/or any interim or permanent video calling and related services rate caps and/or ancillary fee regulations, depending on Commission determinations regarding jurisdiction. Appendix 1 provides questions for parties to address in their legal briefings on Commission jurisdiction over video calling and related services.

## **2.2. Organization of Workshops**

Intervenor parties, led by TURN, recommend we conduct a number of workshops to help build the record in this proceeding, and I thank TURN and other parties for their work developing a set of proposals. I generally agree with parties' recommendations, but this Scoping Memo adopts a simpler schedule. Several considerations guide my approach.

Several parties propose to convene a Cost Structures workshop examining the costs of providing IPCS at the facility level after a robust discovery period during which parties and staff first examine IPCS provider cost data. However, I prefer to convene a Cost Structures workshop relatively early in Phase II to inform subsequent guidance on precisely how IPCS providers should submit cost data in response to discovery requests. Taking this additional step early on will help ensure that analysis of the submitted data yields practical insights.

Therefore, we will target convening a Cost Structures workshop in Q1 2022. The workshop will focus on cost and revenue-related questions and IPCS providers shall be the main presenters. We will shortly issue a more detailed ruling setting forth expectations for IPCS providers regarding the workshop, setting a schedule, and identifying speakers. As suggested by parties, we anticipate requiring IPCS providers to provide their Cost Structures workshop presentations in advance to facilitate productive discussions.

Amongst other questions, the Cost Structures workshop will discuss how we may best request data on and examine incarceration facilities' actual costs and revenues. Discussions shall include identifying the limitations of facility and/or IPCS providers self-reporting of costs and possible "work-arounds" of such limits, if needed. I intend to include in the Cost Structures workshop a section examining communications and network infrastructure structures as they influence IPCS provider costs.

I also intend that the Cost Structures workshop will introduce concepts surrounding the affordability of IPCS to the incarcerated and their families. The concepts of "just and reasonable" and "affordable" can be distinguished as follows. Pub. Util. Code Section 451 requires this Commission to ensure customer access to just and reasonable rates for utility services under our jurisdiction. Typically, the data sources and methodologies typically used to assess whether rates are just and reasonable, that may be used in this proceeding as identified by parties, include comparable rate data, contract cost data, cost of service data, procurement and competition data, data on facilities' direct costs to provide IPCS, data on related services that may be included in bundled service contracts with voice calling services, and/or reasonable return on equity data.

However, Pub. Util. Code Sections 871.5(a) and (d) and Pub. Util. Code Section 709(s) also specify that it is a goal of the state to provide telephone service at an affordable rate.<sup>8</sup> To address this goal, the Commission in 2018 initiated Rulemaking (R.) 18-07-006 to *Establish a Framework and Processes for*

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<sup>8</sup> Pub. Util. Code Section 871.5(a) states that "[t]he offering of high-quality basic telephone service at affordable rates to the greatest number of citizens has been a longstanding goal of the state." Pub. Util. Code Section 709(a) expresses the intent of the state to "assur[e] the continued affordability and widespread availability of high-quality telecommunications services to all Californians."

*Assessing the Affordability of Utility Service.* R.18-07-006 addresses questions of affordability across utility services, including telecommunications services.

In D.20-07-032, the first decision in R.18-07-006, the Commission defined “affordability” as “the degree to which a representative household is able to pay for an essential utility service charge, given its socioeconomic status.”<sup>9</sup> In other words, unlike traditional methods the Commission uses to identify just and reasonable rates (and unjust and unreasonable rates), Commission assessment of the affordability of a given utility rate may involve consideration of a representative customer’s ability to pay as moderated by socioeconomic status.

In D.20-07-032, the Commission adopted a suite of resources to assess the relative affordability of utility services. I believe the metrics and methodologies adopted in D.20-07-032 are relevant to consideration of permanent IPCS rates for the incarcerated and their families. The purpose of this portion of the workshop, therefore, will be to introduce parties to the Commission’s adopted metrics, methods, and tools to support consideration of the relative affordability of IPCS rates during Phase II of this proceeding.<sup>10</sup>

Finally, because solid rate and/or cost data must inform Commission adoption of permanent IPCS regulations and because accessing and analyzing such data is complex and time consuming, I have decided to defer scheduling targeted workshops on equity issues as suggested by TURN until after such time as we have developed a robust record on costs and rates. I will determine later whether to convene equity-oriented workshops during Phase II or to defer a focused consideration of these issues until Phase III of this proceeding. By

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<sup>9</sup> D.20-07-032 at Conclusion of Law 6.

<sup>10</sup> See Phase I R.20-10-002 Scoping Memo at 10-11.

“equity issues” I mean here the unique needs of juvenile/minor incarcerated persons as well as questions on the disparate socioeconomic impacts of the carceral system in California on other vulnerable environmental and social justice (ESJ) communities, including immigrants, low-income, and over-represented groups in the carceral system (African American and Latinx) in California as discussed by TURN.

Regardless of when we convene such workshop(s), we very much welcome parties with networks and contacts in such communities, as well as amongst professionals supporting such communities,<sup>11</sup> to actively assist Communications Division staff in identifying speakers and panel participants and, if feasible, to help identify possible sites to schedule such workshops in-person in incarceration or detention facilities.

### **2.3. Discovery Process and Data Sharing**

To assist with an efficient and robust discovery process, this Scoping Memo includes a Final Protective Order for Rulemaking 20-10-002 and Acknowledgement in Appendix 2. The Final Protective Order has been modestly modified to better conform with Commission Rules of Practice and Procedure, General Order (GO) 66-D, and statute. I thank TURN and parties for their work on this.

I require that any person seeking access to stamped confidential documents and confidential information relating to the issues in this proceeding shall sign and date the Acknowledgment agreeing to be bound by the terms and conditions of the Final Protective Order for R.20-10-002. Parties whose

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<sup>11</sup> See TURN Proposal, at 11. Support professionals may include legal support professionals, mental health professionals, social worker professionals, advocates, criminal justice experts, sociologies, and psychologists. Other very important workshop participants will be current or recently released incarcerated or detained persons and their families.

representatives have signed an Acknowledgement shall file and serve the signed document at least six business days prior to such person reviewing or having access to a submitting party's stamped confidential documents or confidential information.

Each submitting party shall comply with GO 66-D and may file an objection to the disclosure of its stamped confidential documents or confidential information to any person that has signed an Acknowledgement no later than three business days of the date that the Acknowledgment was filed.

During the PHC, intervenor parties requested the Commission develop a secure portal to streamline data sharing in this case. However, I have ascertained that developing such a dedicated portal would take Commission Information Technology Division staff over a year, due to other obligations. Therefore, I have directed Staff to instead to facilitate use of the Commission's Kitework's File Transfer Protocol (FTP) system to streamline data sharing in this case. I have directed Staff to convene an informal introduction to the FTP system early in this phase of the proceeding to support parties use of it for this purpose. The assigned ALJ will issue a ruling announcing the date of this optional training at least 10 days before it is held.

#### **2.4. Alternative IPCS Rate Structures or Programs**

In comments on the OIR, in PHC statements, and during our two PHCs, parties identified the potential of alternative rate options or programs to ensure access to just and reasonable, and affordable, IPCS rates for the incarcerated and their families. Some options identified to date include flat-rate subscription plans, a program like Lifeline, income-based rate relief, and/or mechanisms to introduce IPCS competition within individual incarceration facilities.

Additionally, I would like to consider the model offered by now-discontinued

public purpose programs for pay phones. I am also aware of innovative programs to reduce IPCS rates offered by Los Angeles County and policies that make IPCS calls free to the incarcerated and their families, adopted by the City and County of San Francisco, San Diego County, and the state of Connecticut.

Examining these options in detail could yield useful insights to inform our adoption of permanent IPCS rates and fee requirements. I have therefore scoped questions in this area into Phase II. As with workshops on equity issues, however, I will consider whether and when to schedule a workshop on alternative IPCS rates or programs somewhat later in Phase II.

### **2.5. Issues Deferred to Phase III**

Because there are numerous complex issues within the scope of this proceeding, I must make hard choices to defer consideration of some issues. After careful consideration, I have decided to defer consideration of the following issues until Phase III, or a later phase, of this proceeding:

- Service quality issues;
- Equitable access to IPCS for incarcerated persons with disabilities or with family and/or support network members with disabilities;
- Non-rate contract issues, including but not limited to rules governing unfair disclaimers of warranty, forfeiture of unused prepaid funds, forced arbitration clauses, class action waivers, unconscionable releases of claims, and onerous indemnification provisions;
- Non-rate issues including possible limits requested by IPCS providers on in-person visits to the incarcerated;
- Enhanced consumer education or disclosure requirements;
- Data privacy for incarcerated persons; and,
- Additional enforcement provisions.

I emphasize, however, that deciding to take these issues up later in no way indicates that they are unimportant or that I do not intend to address them.

**3. Issues in Scope in Phase II of Proceeding**

The issues to be determined in Phase II of this proceeding are:

- a. Should the Commission adopt permanent rate caps and/or ancillary fee regulations for voice-only IPCS in California incarceration facilities? What are the unique needs of equity populations that the Commission should consider if and when doing so?
- b. Does the Commission have authority to regulate rates, fees and/or service quality of the following types of communication services provided to the incarcerated and their families: 1) video calling services, including remote video calling services and in-person video calling services; (2) written electronic communication services, including texting (SMS) services, private messaging services, and email services; and/or, (3) entertainment services such as photo sharing, music or video entertainment and/or internet access services (hereafter “video calling and related services”)?
- c. Should the Commission expand the definition of IPCS adopted in D.21-08-037 to include video calling and related services? If so, should the Commission adopt interim or permanent rate caps and/or ancillary fee regulations for video calling and related services?
- d. What methodology should the Commission use to develop any permanent voice-only rate caps or ancillary fee requirements and/or any interim or permanent video calling and related services rate caps and/or ancillary fee regulations?
- e. What types of data should the Commission consider when developing permanent rate caps or ancillary fee requirements for voice-only IPCS and/or any interim or permanent video calling and related services rate caps and/or ancillary fee requirements? Can, and if so, how can

the Commission ensure that self-reported cost data is accurate? What format(s) should the Commission require for reporting of cost data?

- f. Should the Commission assess and ensure the affordability of IPCS to the incarcerated and their families in addition to ensuring that the incarcerated and their families have access to just and reasonable IPCS rates?
- g. Should the Commission consider alternative IPCS rate options or programs? How might alternative IPCS rate options or programs be structured? What oversight would be necessary? Is it feasible or necessary for the Commission to introduce mechanisms to foster competition between providers within incarceration facilities?
- h. Should the Commission establish a waiver process for the interim rates adopted in D21-07-037? If so, what method, data, and/or data submittal format or process should the Commission consider?

#### **4. Need for Evidentiary Hearing**

This Commission preliminarily determined in the OIR to *Consider Regulating Telecommunications Services Used by Incarcerated People* that this proceeding may involve contested issues of material fact and evidentiary hearings may be necessary. This Phase II Scoping Memo does not change this determination. Evidentiary hearings may be needed.

This proceeding has not yet identified specific contested material issues of fact although we expect to do so regarding cost and revenue structures for IPCS services amongst other matters. We will identify contested material issues identified in testimony submitted after a thorough discovery period and any related workshop(s). We will schedule the date(s) of evidentiary hearings for this proceeding at that time.

## 5. Oral Argument

Unless comment is waived pursuant to Rule 14.6.(c)(2) for granting the uncontested relief requested, motion for oral argument shall be by no later than the time for filing comment on the proposed decision.

## 6. Schedule

The following schedule is adopted here and may be modified by the assigned ALJ as required to promote the efficient and fair resolution of this Rulemaking:

Event	Date
Interested parties serve and file signed Protective Order ( <i>see</i> Appendix 2)	Ongoing basis as set forth in Order
Staff training for parties on CPUC Kiteworks File Transfer Protocol system	To Be Determined (TBD)
Discovery and data analysis	Ongoing
Parties serve and file opening briefs ( <i>see</i> questions in Appendix 1)	60 days from issuance of Scoping Memo
Parties serve and file reply briefs	90 days from issuance of Scoping Memo
Cost Structures workshop	Q1 2022
Proposed decision addressing jurisdictional questions	90 - 120 days from filing of reply briefs
Parties serve and file questions to address in testimony	TBD
Opening testimony of IPCS providers served	TBD

Opening testimony of intervenors served	TBD
Prepared IPCS providers rebuttal testimony served	TBD
Additional workshop(s) TBD	
Evidentiary hearing	TBD
Additional opening and reply briefs (TBD)	TBD
Proposed decision	TBD
Commission decision	TBD

The proceeding will stand submitted upon parties’ second filing of reply briefs, unless the ALJ requires further evidence or argument.

The statutory deadline as required by Pub. Util. Code Section 1701.5 for this proceeding is April 8, 2022. To allow time to address the complex issues in scope, we extend the statutory deadline to 18 months from issuance of this Phase II Scoping Memo, or until [18 months from issuance].

**7. Alternative Dispute Resolution (ADR) Program and Settlements**

The Commission’s ADR program offers mediation, early neutral evaluation, and facilitation services, and uses ALJs who have been trained as neutrals. At the parties’ request, the assigned ALJ can refer this proceeding to the Commission’s ADR Coordinator. Additional ADR information is available on the Commission’s website.<sup>12</sup>

Any settlement between parties, whether regarding all or some of the issues, shall comply with Article 12 of the Rules of shall be served in writing. Such settlements shall include a complete explanation of the settlement and a complete explanation of why it is reasonable in light of the whole record,

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<sup>12</sup> See D.07-05-062, Appendix A, § IV.O.

consistent with the law and in the public interest. The proposing parties bear the burden of proof as to whether the settlement should be adopted by the Commission.

**8. Category of Proceeding and Ex Parte Restrictions**

This ruling confirms the Commission's preliminary determination in the OIR that this is a ratesetting proceeding. This Scoping Memo confirms this categorization. Accordingly, ex parte communications are restricted and must be reported pursuant to Article 8 of the Rules.

**9. Public Outreach**

Pursuant to Pub. Util. Code Section 1711.(a), I hereby report that the Commission sought the participation of those likely to be affected by this matter by noticing it in the Commission's monthly newsletter that is served on communities and business that subscribe to it and posted on the Commission's website.

In addition, the Commission served the OIR on the following state and local agencies concerned with prison communications services contracts:

- California State Association of Counties
- California Department of Corrections

The Commission also served the OIR on the following organizations:

- #Cut50
- Access Support Network
- ACLU NorCal
- Ameelio
- Anti-Recidivism Coalition
- APLA Health
- California Catholic Conference

- California Coalition for Women Prisoners
- California Immigrant Policy Center
- California Low-Income Consumer Coalition
- California Public Defenders Association
- Center on Juvenile and Criminal Justice
- Children's Defense Fund
- Community Housing Partnership
- Drug Policy Alliance
- Ella Baker Center for Human Rights
- Essie Justice Group
- Financial Justice Project
- Freedom for Immigrants
- Friends Committee on Legislation of California
- Initiate Justice
- Lawyers' Committee for Civil Rights of the San Francisco Bay Area
- Legal Services for Prisoners with Children
- Media Alliance
- MILPA
- Monterey Peace and Justice Center
- Pangea Legal Services
- Prison Phone Justice
- Prison Works Focus
- Prisoners with Children
- Public Policy Research & Consulting
- Returning Home Foundation
- San Francisco Financial Justice Project
- San Francisco Public Defender
- TGI Justice Project

- The Center for Accessible Technology
- The Greenlining Institute
- The Utility Reform Network
- TransLatin@ Coalition
- Urban Peace Institute
- Western Center on Law and Poverty
- Women’s Policy Institute (WPI)
- Worth Rises
- Young Community Developers
- Young Women's Freedom Center
- Youth Law Center

#### **10. Intervenor Compensation**

Pursuant to Pub. Util. Code Section 1804.(a)(1), a customer who intends to seek an award of compensation must file and serve a notice of intent to claim compensation by October 15, 2021, 30 days after the Phase II PHC, held on September 15, 2021.

#### **11. Response to Public Comments**

Parties may, but are not required to, respond to written comments received from the public. Parties may do so by posting such response using the “Add Public Comment” button on the “Public Comment” tab of the online docket card for the proceeding.

#### **12. Public Advisor**

Any person interested in participating in this proceeding who is unfamiliar with the Commission’s procedures or has questions about the electronic filing procedures is encouraged to obtain more information at <http://consumers.cpuc.ca.gov/pao/> or contact the Commission’s Public

Advisor at 866-849-8390 or 866-836-7825 (TYT), or send an e-mail to [public.advisor@cpuc.ca.gov](mailto:public.advisor@cpuc.ca.gov).

### **13. Filing, Service, and Service List**

The official service list has been created and is on the Commission's website. Parties should confirm that their information on the service list is correct and serve notice of any errors on the Commission's Process office, the service list, and the ALJ. Persons may become a party pursuant to Rule 1.4.

When serving any document, each party must ensure that it is using the current official service list on the Commission's website.

This proceeding will follow the electronic service protocol set forth in Rule 1.10. All parties to this proceeding shall serve documents and pleadings using electronic mail, whenever possible, transmitted no later than 5:00 p.m., on the date scheduled for service to occur. Rule 1.10. requires service on the ALJ of both an electronic and a paper copy of filed or served documents. When serving documents on Commissioners or their personal advisors, whether or not they are on the official service list, parties must only provide electronic service. Parties must not send hard copies of documents to Commissioners or their personal advisors unless specifically instructed to do so.

Persons who are not parties but wish to receive electronic service of documents filed in the proceeding may contact the Process Office at [process\\_office@cpuc.ca.gov](mailto:process_office@cpuc.ca.gov) to request addition to the "Information Only" category of the official service list pursuant to Rule 1.9.(f).

### **14. Service of Documents on Commissioners and Their Personal Advisors**

Rule 1.10. requires only electronic service on any person on the official service list, other than the ALJ.

When serving documents on Commissioners or their personal advisors, whether or not they are on the official service list, parties must only provide electronic service. Parties must not send hard copies of documents to Commissioners or their personal advisors unless specifically instructed to do so.

**15. Assignment of Proceeding**

Commissioner Martha Guzman Aceves is the assigned Commissioner and Cathleen A. Fogel is the assigned Administrative Law Judge and presiding officer for the proceeding.

**IT IS RULED** that:

1. The statutory deadline for this proceeding is extended to 18 months from issuance of this Scoping Memo, or May 29, 2023.
2. The scope of this proceeding is described above.
3. The schedule of this proceeding is set forth above.
4. Evidentiary hearings may be needed.
5. The presiding officer is Administrative Law Judge Cathleen A. Fogel.
6. The category of the proceeding is ratesetting.
7. Any person seeking access to stamped confidential documents and confidential information relating to the issues in this proceeding shall sign and date the Acknowledgment contained in Appendix 2 agreeing to be bound by the terms and conditions of the Protective Order for Rulemaking 20-10-002 also contained in Appendix 2.
8. Parties whose representatives have signed the Acknowledgement contained in Appendix 2 shall file the signed document at least six business days prior to such person reviewing or having access to a submitting party's stamped confidential documents or confidential information.

9. Each submitting party shall comply with General Order 66-D may file an objection to the disclosure of its stamped confidential documents or confidential information to any person that has signed an Acknowledgement no later than three business days of the date that the Acknowledgment was filed.

10. Parties shall file and serve opening briefs on the questions in Appendix 1 no later than 60 days from issuance of this Scoping Memo and shall file and serve replay briefs no later than 90 days from issuance of this Scoping Memo.

This order is effective today.

Dated November 29, 2021, at San Francisco, California.

/s/ MARTHA GUZMAN ACEVES  
Martha Guzman Aceves  
Assigned Commissioner

## Appendix 1

### Questions for Legal Briefing

1. Does the Commission have authority to regulate rates, fees and/or service quality of video and related services provided to incarcerated persons in California, including remote video calling services, in-person video calling services, text (SMS) services, private messaging services, tablet services, photo sharing/music, video entertainment and/or internet access services (hereafter “video and related services”)?
2. If yes, should the Commission adopt interim or permanent rate caps and/or ancillary fee regulations for video and related services?

Appendix 2

**PROTECTIVE ORDER for Rulemaking 20-10-002**

1. In this Protective Order, we adopt procedures to govern access to confidential information that may be filed in this proceeding, Rulemaking (R.) 20-10-002. We anticipate that such information will be necessary to develop a complete record on which to base the California Public Utilities Commission's (Commission) findings, conclusions, and decisions in this proceeding. We therefore will make information marked as confidential available to Parties<sup>13</sup> in this proceeding, but only pursuant to this Protective Order. We conclude that the procedures we adopt in this Protective Order give appropriate access to parties while protecting confidential information from improper disclosure, and that these procedures thereby serve the public interest.<sup>14</sup>

2. The Acknowledgement requirement of this Protective Order does not apply to the Commission's Office of the Public Advocates at the California Public Utilities Commission (Cal Advocates). Cal Advocates is bound instead by the confidentiality requirements of Public Utilities (Pub. Util.) Code §583 and General Order (GO) 66-D.

3. This Protective Order shall remain in effect until it is modified or terminated by the Commission or the assigned Administrative Law Judge (ALJ), or as described in paragraph 15 below, "Termination of Proceeding." Each Party governed by this Protective Order has the right to seek changes in it through the Commission's processes and procedures.

4. Definitions. As used herein, capitalized terms shall have the following meanings:

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<sup>13</sup> Parties are determined pursuant to Rule 1.4 of the Commission's Rules of Practice and Procedure and are listed as such on the service list for this proceeding, R.20-10-002.

<sup>14</sup> This Protective Order does not constitute a resolution of the merits concerning whether any information submitted under the Protective Order would be released publicly by the Commission in response to a proper request under the California Public Records Act (CPRA) (Government Code § 6250 *et seq.*), in response to a subpoena or other discovery, or otherwise.

a. "Acknowledgement" means the Acknowledgement of Confidentiality attached to this Protective Order.

b. "Competitive Decision-Making" means a person's activities, association, or relationship with any of their clients or their employer involving advice about, analysis of, or participation in the relevant business decisions of the client or employer regarding the clients' or employer's provision or offering of Incarcerated Persons Calling Services ("IPCS") or Inmate Calling Services ("ICS") as those terms are broadly defined by the California Public Utilities Commission and the Federal Communications Commission.

c. "Confidential Information" means information that is not otherwise available from publicly available sources and is potentially subject to protection under the California Public Records Act (Government Code § 6250 *et seq.*), or is information that a Party (either the Submitting Party or the third-party who provided the information to the Submitting Party) reasonably claims to be confidential information, has kept strictly confidential, or claims constitutes some of its most sensitive business data which, if revealed, would place the Party at an unfair business advantage. Claims by the Submitting Party that submitted information should qualify for confidential treatment may be subject to review and may either be approved or denied by the assigned ALJ or the Commission pursuant to the Commission's Rules of Practice and Procedure, GO 66-D, and Pub. Util. Code §583.

d. "Counsel" means In-House Counsel and Outside Counsel of Record in this proceeding.

e. "Employee" means a person employed by a Party to this proceeding or employed by an agent or representative of a Party who is actively engaged in the conduct of this proceeding, provided that such person is not involved in Competitive Decision-Making, and Support Personnel.

f. "In-House Counsel" means an attorney employed by a Party to this proceeding and who is actively engaged in the conduct of this proceeding, provided that such attorney is not involved in Competitive Decision-Making. (In this regard, an In-House Counsel's employer is considered his or her client).

g. "Outside Counsel of Record" or "Outside Counsel" means the attorney(s), firm(s) of attorneys, or sole practitioner(s), as the case may be, representing a Party in this proceeding, provided that such attorneys are not involved in Competitive Decision-Making. The term "Outside Counsel of Record" includes any attorney representing a non-commercial Party in this proceeding, provided that such attorney is not involved in Competitive Decision-Making.

h. "Outside Consultant" means a consultant or expert retained for the purpose of assisting Counsel or a Party in this proceeding, provided that such consultant or expert is not involved in Competitive Decision-Making. The term "Outside Consultant" includes any consultant or expert employed by a noncommercial Party in this proceeding, provided that such consultant or expert is not involved in Competitive Decision-Making.

i. "Redacted Confidential Document" means a copy of a Stamped Confidential Document where the Confidential Information has been redacted and the redaction is marked as Confidential Information.

j. "Reviewing Party" means a Party or a Party's Counsel, Employee, Outside Counsel, or Outside Consultant who has obtained access to Stamped Confidential Documents pursuant to paragraphs 5, 6, or 7 of this Protective Order.

k. "Stamped Confidential Document" means any document, or any part thereof, that contains Confidential Information and that bears the legend (or which otherwise shall have had the legend recorded upon it in a manner that attracts the attention of a reasonable examiner) "CONFIDENTIAL INFORMATION -SUBJECT TO PROTECTIVE ORDER IN R.20-10-002." The term "document" means any written, recorded, electronically stored, or graphic material, whether produced or created by the Submitting Party or another person. By designating a document as "Stamped Confidential Document," a Submitting Party signifies and represents that the document contains Confidential Information.

1. "Submitting Party" means a Party who submits a Stamped Confidential Document or Confidential Information to a Reviewing Party or to Commission Staff with a confidentiality claim in accord with the requirements of GO 66-D or in accord with an ALJ or Commission Ruling or Decision granting a motion to submit information under seal.

m. "Support Personnel" means employees of a Reviewing Party or a Reviewing Party's Outside Firm and third-party contractors and employees of third-party contractors who are assisting in this proceeding by performing clerical or ministerial functions with regard to documents and information connected with this proceeding, including performing one or more aspects of organizing, filing, coding, converting, storing, or retrieving documents or data or designing programs for handling data connected with this proceeding.

5. Submitting Party's Obligations in Designating Documents. This Protective Order does not waive compliance with the statutory mandates and Commission's rules governing the submission and use of confidential information in Commission proceedings, including but not limited to GO 66-D, and the Commission's Rules of Practice and Procedure (including Rules 11.3 and 11.4).<sup>15</sup> The designation of any document or information as Confidential shall constitute a representation by the Submitting Party, subject to the Commission's Rule 1.1 and GO 66-D, that the Confidential Information meets the requirements set forth therein for such designations. Only those portions of a document containing Confidential Information should be so designated consistent with guidance provided in this Protective Order.

6. Procedure for Obtaining Access to Stamped Confidential Documents. Any person seeking access to Stamped Confidential Documents and Confidential Information shall sign and date the Acknowledgment agreeing to be bound by the terms and conditions of the Protective Order. Parties whose representatives have signed an Acknowledgment shall file the signed document in the proceeding at least six business days prior to such person reviewing or having access to the Submitting Party's Stamped Confidential Documents or

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<sup>15</sup> May 2021 version.

Confidential Information. Each Submitting Party may file an objection to the disclosure of its Stamped Confidential Documents or Confidential Information to any person that has signed an Acknowledgement no later than three business days of the date that the Acknowledgment was filed.

Further, if a Submitting Party files additional Confidential Documents with the Commission or submits additional Confidential Documents with Cal Advocates, it must comply with GO 66-D and must, separately, file any objection to the disclosure of those additional Confidential Documents to any Reviewing Party before or contemporaneous with filing or submitting those documents.

Where a Reviewing Party seeks access to Confidential Information or Confidential Stamped Documents submitted to another Party in response to that other party's data or discovery request, the Reviewing Party shall serve a request on the Submitting Party at least six business days prior to such a person reviewing or having access to the information or documents specifying the material to which it seeks access. The Submitting Party shall have three business days from the date of receipt of the request for access to file an objection to the requested disclosure. Until any such objection is resolved by the assigned ALJ or a Law and Motion ALJ, a person subject to an objection from a Submitting Party shall not have access to Stamped Confidential Documents or Confidential Information. The provisions of this paragraph shall not be construed to apply to the Cal Advocates, the Commission, or its Staff.

7. Use of Confidential Information. Persons obtaining access to Confidential Information (including Stamped Confidential Documents) under this Protective Order, including a Reviewing Party, shall use the information solely for the preparation and conduct of this proceeding before the Commission and any subsequent judicial proceeding arising directly from this proceeding. Except as provided herein, parties that receive information under this Protective Order shall not use such documents or information for any other purpose, including without limitation business, governmental, or commercial purposes, or in other administrative, regulatory, or judicial proceedings.

A Reviewing Party may discuss and share the contents of Confidential Information with another Reviewing Party, provided they have signed an Acknowledgement, and with the Commission and its staff.

Should the Commission or Staff rely upon or otherwise refer to the contents of any Stamped Confidential Documents or Confidential Information in their decisions or recommendations in this proceeding, they will do so by redacting any Confidential Information from the public version of the decision and by making the unredacted version of the decision or document available only pursuant to California Public Records Act (Government Code § 6250 *et seq.*), Pub. Util. Code § 583, GO 66-D, and the Commission's Rules of Practice and Procedure to a court subject to judicial process and procedure and to those persons entitled to access to Confidential Information under this Protective Order.

8. Filings with the Commission. A Reviewing Party or a Submitting Party may disclose Stamped Confidential Documents or Confidential Information in any document that it files in this proceeding (*e.g.*, comments) only if it complies with GO 66-D, Rule 11.4 of the Commission's Rules of Practice and Procedures, and the following procedure. The party shall submit to the Commission one copy of the filing containing Confidential Information (the "Confidential Filing") and an accompanying cover statement. The cover statement or first page of the Confidential Filing and each page of the Confidential Filing that contains or discloses Confidential Information must be clearly marked "CONFIDENTIAL INFORMATION - SUBJECT TO PROTECTIVE ORDER IN R.20-10-002." The Confidential Filing shall be made under seal pursuant to the Commission's processes and procedures and will not be placed in the Commission's public file. The party shall also submit a copy of the filing in redacted form, *i.e.*, containing no Confidential Information (the "Redacted Confidential Filing"), to the Commission.

The Redacted Confidential Filing and the accompanying cover statement shall be stamped "REDACTED - FOR PUBLIC INSPECTION." The cover statement accompanying the Redacted Confidential Filing shall state that the Submitting Party is filing a redacted version of the filing. Each Redacted

Confidential Filing shall have the same pagination as the Confidential Filing from which it is derived. To the extent that any page of the Confidential Filing contains both Confidential Information and non-confidential information, only the Confidential Information may be redacted and the page of the unredacted Confidential Filing shall clearly distinguish the Confidential Information from the non-confidential information.

9. Service of Documents Containing Stamped Confidential Information.

Reviewing and Submitting Parties shall serve, or otherwise make available through such procedures as the Commission may adopt, documents containing Stamped Confidential Information or attachments of Stamped Confidential Documents, only on those Parties and their representatives that have signed and filed the appropriate Acknowledgement and are eligible to receive such information and documents pursuant to this Protective Order. The Submitting or Reviewing Party shall serve the public redacted version on all parties to the proceeding as listed in the Commission's official Service List.

10. Non-Disclosure of Stamped Confidential Documents. No Party shall disclose Confidential Documents or Information received pursuant to this Protective Order to a person not authorized by this Protective Order except upon prior written consent by the Submitting Party or upon further order or ruling of the Commission, the assigned Commissioner, the assigned ALJ, or a law and motion ALJ. Disclosure of Confidential Information or Stamped Confidential Documents by any person as provided herein including by accidental disclosure shall not be deemed a waiver by any Submitting Party of any privilege or entitlement to confidential treatment of such Confidential Information. Reviewing Parties, by viewing this material, agree: (1) not to assert any such waiver; (2) not to use Confidential Information to seek disclosure in other proceedings; (3) that accidental disclosure of Confidential Information by the Submitting Party shall not be deemed a waiver of any privilege or entitlement as long as the Submitting Party takes prompt remedial action.

11. Protection of Confidential Documents and Information. A Reviewing Party shall have the obligation to ensure that access to Confidential Information and Stamped Confidential Documents under its control is strictly limited as

prescribed in this Protective Order. A Reviewing Party shall further have the obligation to ensure that its use of Confidential Information and Documents are only as provided in this Protective Order.

12. Client Consultation. Nothing in this Protective Order shall prevent or otherwise restrict Counsel from rendering advice to their clients relating to the conduct of this proceeding and any subsequent judicial proceeding arising therefrom and, in the course thereof, relying generally on examination of Stamped Confidential Documents or Confidential Information that they have received pursuant to this Protective Order; provided, however, that in rendering such advice and otherwise communicating with such client, Counsel shall not disclose Stamped Confidential Documents or Confidential Information that they have received pursuant to this Protective Order to anyone not authorized to receive such information pursuant to this Protective Order.

13. Violations of Protective Order. Should a Reviewing Party, or any of its representatives violate any of the terms of this Protective Order, such Reviewing Party shall immediately convey that fact to the Commission and to the Submitting Party. Further, should such violation consist of improper disclosure of Confidential Information, the entity responsible for such disclosure shall take all necessary steps to remedy the improper disclosure. The Commission retains its full authority to fashion appropriate sanctions for violations of this Protective Order upon review and comment by affected parties, including denial of further access to Confidential Information in this or future Commission proceedings. Nothing in this Protective Order shall limit any other rights and remedies available to the Submitting Party at law or in equity against any person using Confidential Information in a manner not authorized by this Protective Order.

14. Subpoena by Courts, Departments, or Agencies. If a court, or a federal or state department or agency issues a subpoena for or orders the production of Stamped Confidential Documents or Confidential Information that a Party has obtained under terms of this Protective Order, such Party shall promptly notify each Submitting Party of the pendency of such subpoena or order. Consistent with the independent authority of any court, department or agency, such notification must be accomplished such that the Submitting Party has a full

opportunity to oppose such production prior to the production or disclosure of any Stamped Confidential Document or Confidential Information.

15. Termination of Proceeding. The provisions of this Protective Order shall not terminate at the conclusion of this proceeding (*i.e.*, when a final decision closes this proceeding). Within two weeks after conclusion of this proceeding or after any decision on administrative or judicial review of the Commission's actions in this proceeding, or as otherwise directed by the Commission, Reviewing Parties shall consult with Submitting Parties and, upon request by Submitting Party, destroy or return to the Submitting Party Stamped Confidential Documents and all copies of the same.

No material whatsoever derived from Stamped Confidential Documents may be retained, except Counsel may retain, under the continuing strictures of this Protective Order, two copies of pleadings (one of which may be in electronic format) prepared in whole or in part by that Party that contain Confidential Information, and one copy of orders issued by the Commission that contain Confidential Information.

All Counsel shall certify compliance with these terms and shall deliver such certification to Counsel for the Submitting Party not more than three weeks after conclusion of this proceeding or after any decision on administrative or judicial review of the Commission's actions in this proceeding, or as otherwise directed by the Commission. The provisions of this paragraph regarding retention of Stamped Confidential Documents and Confidential Information shall not be construed to apply to the Commission or its staff.

**Acknowledgment of PROTECTIVE ORDER and Confidentiality Requirements in Rulemaking 20-10-002**

I hereby acknowledge that I have received and read a copy of the Protective Order in the above-captioned proceeding, and I understand it. I agree that I am bound by the Protective Order and that I shall not disclose or use Stamped Confidential Documents or, Confidential Information except as allowed by the Protective Order.

I acknowledge that a violation of the Protective Order is a violation of an order of the California Public Utilities Commission.

I acknowledge that nothing in the Protective Order limits any other rights and remedies available to a Submitting Party or Reviewing Party at law or equity against me if I use Confidential Information in a manner not authorized by the Protective Order.

I certify I am not involved in Competitive Decision-Making.

I acknowledge specifically that my access to any information obtained as a result of the Protective Order is due solely to my capacity as a representative of a Reviewing Party, including as an Employee, Counsel or Outside Consultant to a Reviewing Party and agree that I will not use such information in any other capacity.

I certify that I have procedures in place to prevent unauthorized disclosure of Stamped Confidential Documents or Confidential Information.

I certify that I seek access to Confidential Information or Stamped Confidential Documents on behalf of the following Party:\_\_\_\_\_ .

Executed this \_\_\_\_\_ day of \_\_\_\_\_, 202[ ].

[Name]  
[Position and Company]  
[Company Address]  
[Telephone]